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in the

Supreme Court

of the

United States

OCTOBER TERM, 1968

No. 1126

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ARGUMENT

Federal jurisdiction under the Hobbs Act requires obstruction or delay of interstate commerce. The incidents of alleged robbery and extortion do not qualify as grounds for federal jurisdiction under the Hobbs Act in

the case at bar. No obstruction of interstate commerce occurred or could have occurred because all interstate commerce transactions had been completed at the time of the alleged offenses.

Testimony at trial (TR 243) discloses that out-of-state sales by Red Ball were made only to M & E Sales in Chicago, Illinois, and to Merchandise Brokers in Elizabeth, New Jersey. (TR 242). Obstruction of interstate commerce would necessarily have to be proved, therefore, in prevention of sales with either of those merchants.

No interference with shipments to Merchandise Brokers occurred, however, nor were any transactions altered. (TR 251). The last shipment was made to M & E Sales a week before the incidents alleged (TR 255, 256), and payment was received the day of the events charged. All subsequent sales were local.

Contrary to Respondent's contention, therefore (Brief for United States in Opposition, Page 4) no inference of obstruction or delay of operations with out-of-state buyers "thereafter" was permissible to confer federal jurisdiction. No destructive burden on commerce was shown, as required under existing case law. **Stirone v. United States**, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960).

In the **Stirone** case, this Court excluded from consideration the prospective shipments as a ground for bringing a transaction within the provisions of the Hobbs Act, because the case was decided on another point. In the case at bar, prospective shipments are not before this Court, because no prospective shipments were contemplated or shown to have been contemplated by Red Ball.

Red Ball did not consent to extortion to alleviate a burden on its interstate commerce transactions, which would bring the Hobbs Act into focus.

In **United States v. Provenzano**, 334 F.2d 678, 692-293 (3rd Cir.), certiorari denied 379 U.S. 947, the court relied on **Stirone** to the effect that the trial jury could find commerce was saved from blockage by the victim's compliance with illegal demands. In **Provenzano**, (p. 693) as in **Stirone**, and **United States v. Kramer**, 355 F.2d 891 897 (7th Cir.), the circumstances were such that commerce was maintained by the illegal payments, unlike the case at bar, in which all interstate commerce transactions had terminated prior to the occurrence of the alleged events. The alleged robbery and extortion by Petitioners DARA and FARINELLA consisted of a single incident relating to a specific sum of money. In order to establish federal grounds, it would be necessary to prove obstruction to interstate commerce by the robbery or extortion of the particular sum, because no continuing transactions in interstate commerce were contemplated or executed.

Since the robbery or extortion alleged could not affect commerce, which had already been concluded, a mere attempt could not affect commerce. Additionally, the nature of the attempt alleged in the charge was not the attempt delineated in the Hobbs Act, as required by the court in **United States v. Pranno**, 385 F.2d 387, 389-390 (7th Cir.). Although it may be possible to infer that depletion of resources of a business results in delay of its operations, there is no basis for any inference that those operations were in interstate commerce; that issue must be proved.

CONCLUSION

For the foregoing reasons as well as those contained in Petition for Writ of Certiorari, it is respectfully submitted that this Court should grant Petition for Writ of Certiorari, and reverse the decisions of the lower courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Petitioners was mailed to Erwin N. Griswold, Solicitor General, Washington, D. C., Will Wilson, Assistant Attorney General, c/o Department of Justice, Washington, D. C. 20530, William G. Earle, Department of Justice, Criminal Division, Post Office Box 1070, Miami, Florida 33101 and Jerome M. Feit and Roger A. Pauley, Department of Justice, Washington, D. C. 20530, this _____ day of April, 1969.

Natalie Baskin